IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs April 2, 2007

HCA HEALTH SERVICES OF TENNESSEE dba CENTENNIAL MEDICAL CENTER v. DOROTHY BARRON

Appeal from the Probate Court for Davidson County
No. 04P1878 Randy Kennedy, Judge

No. M2005-00627-COA-R3-CV - Filed on May 18, 2007

HCA Health Services of Tennessee, which does business as Centennial Medical Center ("HCA"), filed an emergency petition seeking to have a conservator appointed for a patient, Dorothy Barron. The trial court appointed a guardian ad litem and an attorney ad litem for Ms. Barron. Following a hearing, the court appointed a temporary conservator. Later, the temporary conservator approved a transfer of Ms. Barron to a nursing home. The trial court later dismissed the petition insofar as it sought the appointment of a permanent conservator. Ms. Barron appeals claiming she was denied due process of law and equal protection of the law in violation of the Fourteenth Amendment to the United Stated Constitution. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

Dorothy Barron, appellant, pro se.

Dixie W. Cooper, Catherine M. Corless, and Christopher A. Vrettos, Nashville, Tennessee, for the appellee, HCA Health Services of Tennessee dba Centennial Medical Center.

OPINION

I.

This litigation began in November 2004 when HCA filed an emergency petition for the appointment of a conservator to make health care decisions for Ms. Barron. In this petition, HCA claimed that Ms. Barron was not competent to make health care decisions. According to HCA,

> Ms. Barron currently suffers from a variety of medical problems, including conversion disorder, somatization disorder, paranoid personality, low back pain with lower limb weakness, and resolving deep vein thrombosis due to her unwillingness to mobilize. Ms. Barron was transferred to [HCA] from Parthenon Pavillion, a psychiatric facility, on October 24, 2004 because she developed deep vein thrombosis. During her hospital stay, Ms. Barron has continuously refused to cooperate with her treating physicians, including the psychiatrist and consulting physicians. Ms. Barron has continuously requested hydro-therapy because she believes it is the only therapy that improves her condition. Her physician ordered hydro-therapy, but she then refused to cooperate during the hydro-therapy sessions. She also refused to cooperate during occupational therapy sessions. Since October 27, 2004, Ms. Barron has been appropriate for transfer because she no longer needs acute medical care. Her treating physicians have given orders for her to be transferred to an intermediate care facility, i.e. nursing home, instead of home because she is unable to care for herself and, according to Ms. Barron, no family members are available to assist with her care because they have all been "exhausted." Ms. Barron refuses to be transferred to an intermediate care facility because she believes she needs skilled care, i.e. care that offers hydro-therapy, despite the opinions of her treating physicians. Ms. Barron initiated an appeal of her treating physicians' decisions to transfer her and Medicare agreed with her treating physicians. At this time, Ms. Barron refuses to cooperate with her medical team that is trying to make medical decisions regarding her long term care. She refuses to consent to transfer, participate in her discharge plan, or to allow her medical [team] to contact family members to assist with her medical care. Moreover, she refuses to participate in any therapy sessions or to mobilize in any manner, which increases her risk of death due to the possibility of developing additional blood clots. . . . Petitioner believes that Ms. Barron is currently incapable of providing informed consent for additional medical treatment and is incompetent to make her own decisions concerning her medical treatment. Consequently, it is expected that Ms. Barron will require the appointment of a

> temporary conservator to make healthcare decisions for her in the future.

(Paragraph numbering in original omitted). Pursuant to T.C.A. § 34-3-105(c)(2001)[1], HCA submitted affidavits from two of Ms. Barron's physicians, Dr. Juli Horton and Dr. Ron Wilson. Dr. Horton was Ms. Barron's treating physician and Dr. Wilson was a consulting physician. Both affidavits support in detail the allegations set forth in the petition.

On the day the petition was filed, the trial court entered an order appointing Thomas Ware, Esquire, as Ms. Barron's temporary conservator "until further hearing on this matter." The court also appointed a guardian ad litem "to investigate this matter." Approximately one month later, pursuant to the request of the guardian ad litem, the trial court appointed an attorney ad litem to represent and protect Ms. Barron's interests.

In December 2004, Ms. Barron filed a pro se response to the petition claiming, among other things, that hydro-therapy was the "only effective treatment" for her back condition. She asserted that she was being denied that treatment, which denial, according to her, was causing her overall health to deteriorate. Ms. Barron requested that Dr. Horton no longer be allowed to participate in her medical treatment. She also claimed that she was defamed by that portion of the petition asserting that she was mentally incompetent and unable to make informed healthcare decisions. Ms. Barron later filed a second response to the petition. In her second response, she demanded a jury trial and compensatory and punitive damages in excess of $15,000, private nursing care at her own residence to be paid by HCA, and a written letter of apology for HCA's defamatory statements.

HCA filed a motion requesting that the trial court permit the temporary conservator to authorize Ms. Barron's transfer to a nursing home or other appropriate healthcare facility. The trial court reserved ruling on the motion. It made arrangements for a part of the hearing to be conducted at the HCA facility so Ms. Barron could testify. After the hearing, the trial court entered an order stating as follows:

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[1] T.C.A. § 34-3-104(7)(A) (Supp. 2006) provides that a petition to have a conservator appointed "should" contain, *inter alia*, "a sworn medical examination report described in § 34-3-105(c) . . . ." T.C.A. § 34-3-105(c) requires the report to contain the following:

> (1) The respondent's medical history;
>
> (2) A description of the nature and type of the respondent's disability;
>
> (3) An opinion as to whether a conservator is needed and the type and scope of the conservator with specific statement of the reasons for the recommendation of conservatorship; and
>
> (4) Any other matters as the court deems necessary or advisable.

The affidavits of Dr. Horton and Dr. Wilson complied with these statutory requirements.

> Upon the sworn testimony of the Respondent, Dorothy Barron, receipt and review of Ms. Barron's Answer . . . , and statements of Mark Reagan, Esq., the attorney ad litem, this Court makes the following findings:
>
> 1. Thomas Ware, temporary conservator, shall be and is expressly authorized to consent to the transfer of Ms. Barron from [HCA's] Centennial Medical Center to such other medical facility or nursing home facility as he shall deem to be appropriate, pending further orders of this Court;
>
> 2. Any and all funds currently held by Centennial Medical Center on behalf of Ms. Barron shall be provided to her temporary conservator, Thomas Ware, with receipt acknowledged;
>
> 3. Bruce Poag, the guardian ad litem, having admirably performed his duties in this matter is hereby discharged;
>
> 4. At the request of Ms. Barron, Mark Reagan shall continue to serve in his capacity as attorney [ad] litem in this matter . . . .

Following the entry of the order, Ms. Barron was transferred to Oak Manor Nursing Home with instructions that she be allowed to leave at any time of her choosing.

A final hearing was conducted on January 19, 2005, following which the trial court entered an order stating, *inter alia*, as follows:

> This cause came on to be heard on the 19th day of January, 2005, . . . upon the Petition to Appoint Conservator, heretofore filed in this cause by the Petitioner [HCA]; the sworn medical reports submitted by the Petitioner; the emergency Order Appointing Temporary Conservator, entered in this cause on November 24, 2004; the Report of the Guardian Ad Litem; the statements of the Attorney *ad litem*; the statements of the temporary conservator; the medical report of Dr. Winkler; the motion to dismiss Petition to Appoint Conservator, made in open Court by the attorney *ad litem*; and the entire record in this cause, from all of which the Court is of the opinion that the Respondent, Dorothy Barron, is not presently disabled as defined by T.C.A. 34-11-101, *et seq.*, and, therefore, the Petition to Appoint Conservator heretofore filed in this cause should be overruled and dismissed at this time. . . .

II.

Ms. Barron appeals claiming she was denied due process of law in violation of the Fourteenth Amendment to the United States Constitution and that certain discriminatory actions of the trial court denied her equal protection of the law also in violation of the Fourteenth Amendment.

III.

In this non-jury case, our standard of review is *de novo* upon the record of the proceedings below; however, the record comes to us with a presumption of correctness as to the trial court's factual determinations, a presumption we must honor unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); ***Wright v. City of Knoxville***, 898 S.W.2d 177, 181 (Tenn. 1995). Our review of questions of law is *de novo* with no presumption of correctness attaching to the trial court's conclusions of law. ***Campbell v. Florida Steel Corp.***, 919 S.W.2d 26, 35 (Tenn. 1996).

IV.

At the outset, we note that

> [p]arties who choose to represent themselves are entitled to fair and equal treatment by the courts. *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997). However, the courts may not prejudice the substantive rights of the other parties in order to be "fair" to parties representing themselves. Parties who choose to represent themselves are not excused from complying with the same applicable substantive and procedural law that represented parties must comply with. *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995); *Irvin v. City of Clarksville*, 767 S.W.2d 649, 652 (Tenn. Ct. App. 1988).

Hodges v. Attorney General, 43 S.W.3d 918, 920-21 (Tenn. Ct. App. 2000).

V.

We will first discuss Ms. Barron's due process claim. In ***Wilson v. Blount County***, 207 S.W.3d 741 (Tenn. 2006), the Supreme Court stated the following:

> The Due Process Clause of the Fourteenth Amendment of the United States Constitution requires that "deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950); *see also Martin v. Sizemore*,

> 78 S.W.3d 249, 262 (Tenn. Ct. App. 2001) ("The Due Process Clause . . . and Tenn. Const. art. I, § 8 provide similar procedural protections and guarantees."). The notice required by the Due Process Clause is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 314, 70 S.Ct. 652.

Wilson, 207 S.W.3d at 748. Ms. Barron's due process claim arises from the portion of the hearing which took place at the HCA facility. According to her, during that part of the hearing, the court did not allow her to question HCA about the petition to have a conservator appointed. Ms. Barron claims that the Judge told her he was aware of HCA's position and he was there "because he had heard that [she] wanted to talk to him."

We do not believe that Ms. Barron was denied due process at any point in these proceedings. In fact, the trial court did everything in its power to assure that Ms. Barron's rights were not violated. Specifically, the court appointed an attorney ad litem to represent Ms. Barron's interests. There is nothing in the record to suggest that Ms. Barron's attorney ad litem was prevented in any way from questioning any of the other parties or witnesses, including HCA and the guardian ad litem. On the contrary, the record supports a conclusion that the attorney ad litem fully and competently protected Ms. Barron's interests, as evidenced by the fact that the attorney ad litem's oral motion to have the petition dismissed insofar as it sought the appointment of a permanent conservator was granted, thereby ending this litigation at the trial level. In addition to the foregoing, the court went to the HCA facility so it could talk to Ms. Barron personally. Procedural due process "requires 'fundamentally fair' procedures to be employed whenever a governmental entity acts to deprive a person of a right to or interest in life, liberty or property." ***Abdur'Rahman v. Bredesen***, 181 S.W.3d 292, 309 (Tenn. 2005). Ms. Barron's due process rights were fully protected.

Ms. Barron's claim that she was denied equal protection of the law centers around a remark allegedly made by the Judge during the hearing at Ms. Barron's bedside. According to Ms. Barron,

> [t]he Court, during the beginning of his remarks at the Court Hearing on December 15, 2004, told the Respondent-Appellant that she was intelligent and articulate. The Respondent, who is an indigent, African American woman, with a physical disability considered the Court's remark prejudicial and discriminatory.

It certainly seems to this Court that when deciding whether a person is so disabled or incapacitated as to require the appointment of a conservator, factors that would weigh *against* the need for a conservator would include whether the person is "intelligent and articulate." Assuming, for present purposes only, that the trial court made the comment as alleged, such comment was clearly not intended to be discriminatory or condescending, but rather was made in further support of the court's

ultimate conclusion that Ms. Barron was not in need of a permanent conservator. This issue is without merit.

We note that the litigation ultimately ended in Ms. Barron's favor, a conclusion which she obviously does not appeal. Rather, this appeal centers around the trial court's appointment of a temporary conservator. Since such an appointment is specifically provided for by statute, we do not understand how it can form the basis for a defamation action as claimed by Ms. Barron. We have reviewed Ms. Barron's brief in detail, which focuses primarily on her claim that no temporary conservator was in fact needed. The preponderance of the evidence, however, does not weigh against the trial court's decision to appoint a temporary conservator. The procedures utilized by the trial court fully and fairly protected Ms. Barron's interests. The judgment of the trial court must, therefore, be affirmed.

VI.

At this juncture, we feel constrained to state that this Middle Section case was first assigned to the Eastern Section of this Court on April 2, 2007. We regret that there was such a long delay in assigning this case to a panel of judges.

VII.

The judgment of the trial court is affirmed and this cause is remanded to the trial court for collection of the costs below, as authorized by law.[2] Costs on appeal are assessed to the appellant, Dorothy Barron.

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CHARLES D. SUSANO, JR., JUDGE

[2] When the trial court dismissed the petition after determining Ms. Barron did not need to have a permanent conservator appointed, the trial court taxed all of the costs to HCA. Our taxing of the costs on appeal to Ms. Barron does not alter the taxing of costs at the trial court level to HCA.